

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	: BONNET et al.
Serial No.	: 10/599,909
Cnfrm. No.	: 6494
Filed	: October 13, 2006
Title	: COSMETIC COMPOSITION BASED ON CAPER FLOWER BUD EXTRACT

Examiner:
Catheryne ChenArt Unit:
1655DECLARATION OF ESTELLE BONNET
UNDER 37 C.F.R. § 1.132

I, **ESTELLE BONNET**, pursuant to 37 C.F.R. § 1.132, declare:

1. I am currently employed as an Analyst at Gattefossé SAS, Saint-Priest, FRANCE.
2. I am a co-inventor of the subject matter described and claimed in the above-identified patent application, i.e., U.S. Patent Application Serial No. 10/599,909 to Bonnet et al. (referred to herein as the "Bonnet Application"). The other co-inventors include Alain GUICHON, Virginie CHARTON, Vincent HUBICHE, and Paula LENNON.
3. I am familiar with and have reviewed the following article: Schutz, C. & J. Grousson, "Caper Bud Extract: A New Tool Against Cutaneous Hypersensitivity," *SÖFW-Journal* 130:57-64 (2004) (referred to herein as the "*SÖFW* Article").
4. I am aware that the two co-authors of the *SÖFW* Article are Caroline Schutz and Jérôme Grousson. I am also aware that both Ms. Schutz and Mr. Grousson were employees of Gattefossé SAS at the time of the drafting and publication of the *SÖFW* Article.
5. I am aware that the *SÖFW* Article has been asserted in an Office Action (mailed January 26, 2009) as prior art against the claims of the Bonnet Application. In particular, I have reviewed the prior art rejections based on the *SÖFW* Article, as set forth on pages 3-6 of the aforementioned Office Action (attached hereto as **Exhibit 1**).

6. I am presenting this Declaration to provide factual information on the publication date of the *SÖFW* Article and on the source of the data, procedures, and other information disclosed in the *SÖFW* Article.

7. The *SÖFW* Article was published in September 2004.

8. The data, procedures, and other information disclosed in the *SÖFW* Article, and attributed to the *SÖFW* Article on pages 3-6 of the Office Action (*see Exhibit 1*), were derived from the work done by my aforementioned co-inventors and me, and correspond to the subject matter described and/or claimed in the Bonnet Application.

9. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

27/04/2009

Date

/ Estelle BONNET /

Estelle Bonnet

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Catherine Chen

Art Unit:
1655

DECLARATION OF VIRGINIE CHARTON
UNDER 37 C.F.R. § 1.132

I, **Virginie CHARTON**, pursuant to 37 C.F.R. § 1.132, declare:

1. I am currently employed as a Research Scientist at Gattefossé SAS, Saint-Priest, FRANCE.
2. I am a co-inventor of the subject matter described and claimed in the above-identified patent application, i.e., U.S. Patent Application Serial No. 10/599,909 to Bonnet et al. (referred to herein as the “Bonnet Application”). The other co-inventors include Alain GUICHON, Estelle BONNET, Vincent HUBICHE, and Paula LENNON.
3. I am familiar with and have reviewed the following article: Schutz, C. & J. Grousson, “Caper Bud Extract: A New Tool Against Cutaneous Hypersensitivity,” *SÖFW-Journal* 130:57-64 (2004) (referred to herein as the “*SÖFW* Article”).
4. I am aware that the two co-authors of the *SÖFW* Article are Caroline Schutz and Jérôme Grousson. I am also aware that both Ms. Schutz and Mr. Grousson were employees of Gattefossé SAS at the time of the drafting and publication of the *SÖFW* Article.
5. I am aware that the *SÖFW* Article has been asserted in an Office Action (mailed January 26, 2009) as prior art against the claims of the Bonnet Application. In particular, I have reviewed the prior art rejections based on the *SÖFW* Article, as set forth on pages 3-6 of the aforementioned Office Action (attached hereto as **Exhibit 1**).

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7. The *SÖFW* Article was published in September 2004.

8. The data, procedures, and other information disclosed in the *SÖFW* Article, and attributed to the *SÖFW* Article on pages 3-6 of the Office Action (*see Exhibit 1*), were derived from the work done by my aforementioned co-inventors and me, and correspond to the subject matter described and/or claimed in the Bonnet Application.

9. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

27/04/2008

Date

1 Virginie Charton 1

Virginie Charton

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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DECLARATION OF JÉRÔME GROUSSON
UNDER 37 C.F.R. § 1.132

I, **JÉRÔME GROUSSON**, pursuant to 37 C.F.R. § 1.132, declare:

1. I am currently employed as a Marketing Manager at Gattefossé SAS, Saint-Priest, FRANCE.

2. While employed at Gattefossé SAS, I co-authored the following article: Schutz, C. & J. Grousson, "Caper Bud Extract: A New Tool Against Cutaneous Hypersensitivity," *SÖFW-Journal* 130:57-64 (2004) (referred to herein as the "*SÖFW* Article").

3. Caroline Schutz, my co-author on the *SÖFW* Article, was also employed by Gattefossé SAS at the time of the drafting and publication of the *SÖFW* Article.

4. I am familiar with the subject matter described and currently claimed in U.S. Patent Application Serial No. 10/599,909 to Bonnet et al. (referred to herein as the "Bonnet Application"). I am also aware that the *SÖFW* Article has been asserted in an Office Action (mailed January 26, 2009) as prior art against the claims of the Bonnet Application. In particular, I have reviewed the prior art rejections based on the *SÖFW* Article, as set forth on pages 3-6 of the aforementioned Office Action (attached hereto as **Exhibit 1**).

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7. The data, procedures, and other information disclosed in the *SÖFW* Article, and attributed to the *SÖFW* Article on pages 3-6 of the Office Action (*see Exhibit 1*), were derived from the work done by the inventors of the Bonnet Application, and correspond to the subject matter described and/or claimed in the Bonnet Application.

8. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

April 24 2009

Date

Jérôme GROSSON

Jérôme Grousseau

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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DECLARATION OF ALAIN GUICHON
UNDER 37 C.F.R. § 1.132

I, **Alain GUICHON**, pursuant to 37 C.F.R. § 1.132, declare:

1. I am currently employed as a pharmacist at Gattefossé SAS, Saint-Priest, FRANCE.
2. I am a co-inventor of the subject matter described and claimed in the above-identified patent application, i.e., U.S. Patent Application Serial No. 10/599,909 to Bonnet et al. (referred to herein as the "Bonnet Application"). The other co-inventors include Virginie CHARTON, Estelle BONNET, Vincent HUBICHE, and Paula LENNON.
3. I am familiar with and have reviewed the following article: Schutz, C. & J. Grousson, "Caper Bud Extract: A New Tool Against Cutaneous Hypersensitivity," *SÖFW-Journal* 130:57-64 (2004) (referred to herein as the "*SÖFW* Article").
4. I am aware that the two co-authors of the *SÖFW* Article are Caroline Schutz and Jérôme Grousson. I am also aware that both Ms. Schutz and Mr. Grousson were employees of Gattefossé SAS at the time of the drafting and publication of the *SÖFW* Article.
5. I am aware that the *SÖFW* Article has been asserted in an Office Action (mailed January 26, 2009) as prior art against the claims of the Bonnet Application. In particular, I have reviewed the prior art rejections based on the *SÖFW* Article, as set forth on pages 3-6 of the aforementioned Office Action (attached hereto as **Exhibit 1**).

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8. The data, procedures, and other information disclosed in the *SÖFW* Article, and attributed to the *SÖFW* Article on pages 3-6 of the Office Action (*see Exhibit 1*), were derived from the work done by my aforementioned co-inventors and me, and correspond to the subject matter described and/or claimed in the Bonnet Application.

9. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

27/06/2009
Date

'Alain Guichon'
Alain Guichon

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Catheryne Chen

Art Unit:
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DECLARATION OF PAULA LENNON
UNDER 37 C.F.R. § 1.132

I, **Paula LENNON**, pursuant to 37 C.F.R. § 1.132, declare:

1. I am currently employed as a Scientist at Gattefossé SAS, Saint-Priest, FRANCE.
2. I am a co-inventor of the subject matter described and claimed in the above-identified patent application, i.e., U.S. Patent Application Serial No. 10/599,909 to Bonnet et al. (referred to herein as the "Bonnet Application"). The other co-inventors include Virginie CHARTON, Estelle BONNET, Alain GUICHON, and Vincent HUBICHE.
3. I am familiar with and have reviewed the following article: Schutz, C. & J. Grousson, "Caper Bud Extract: A New Tool Against Cutaneous Hypersensitivity," *SÖFW-Journal* 130:57-64 (2004) (referred to herein as the "*SÖFW* Article").
4. I am aware that the two co-authors of the *SÖFW* Article are Caroline Schutz and Jérôme Grousson. I am also aware that both Ms. Schutz and Mr. Grousson were employees of Gattefossé SAS at the time of the drafting and publication of the *SÖFW* Article.
5. I am aware that the *SÖFW* Article has been asserted in an Office Action (mailed January 26, 2009) as prior art against the claims of the Bonnet Application. In particular, I have reviewed the prior art rejections based on the *SÖFW* Article, as set forth on pages 3-6 of the aforementioned Office Action (attached hereto as **Exhibit 1**).

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9. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

27 april '09
Date

Paula Lennon
Paula LENNON

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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**DECLARATION OF CAROLINE SCHUTZ
UNDER 37 C.F.R. § 1.132**

I, **CAROLINE SCHUTZ**, pursuant to 37 C.F.R. § 1.132, declare:

1. I am currently employed as a International Support Manager at Gattefossé SAS, Saint-Priest, FRANCE.

2. While employed at Gattefossé SAS, I co-authored the following article: Schutz, C. & J. Grousseau, "Caper Bud Extract: A New Tool Against Cutaneous Hypersensitivity," *SÖFW-Journal* 130:57-64 (2004) (referred to herein as the "*SÖFW* Article").

3. Jérôme Grousseau, my co-author on the *SÖFW* Article, was also employed by Gattefossé SAS at the time of the drafting and publication of the *SÖFW* Article.

4. I am familiar with the subject matter described and currently claimed in U.S. Patent Application Serial No. 10/599,909 to Bonnet et al. (referred to herein as the "Bonnet Application"). I am also aware that the *SÖFW* Article has been asserted in an Office Action (mailed January 26, 2009) as prior art against the claims of the Bonnet Application. In particular, I have reviewed the prior art rejections based on the *SÖFW* Article, as set forth on pages 3-6 of the aforementioned Office Action (attached hereto as **Exhibit 1**).

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6. The *SÖFW* Article was published in September 2004.

7. The data, procedures, and other information disclosed in the *SÖFW* Article, and attributed to the *SÖFW* Article on pages 3-6 of the Office Action (*see Exhibit 1*), were derived from the work done by the inventors of the Bonnet Application, and correspond to the subject matter described and/or claimed in the Bonnet Application.

8. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

24/04/2009

Date

/ Caroline Schutz /

Caroline Schutz

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Serial No. : 10/599,909

Cnfrm. No. : 6494

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Catherine Chen

Art Unit:
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DECLARATION OF VINCENT HUBICHE
UNDER 37 C.F.R. § 1.132

I, **Vincent HUBICHE**, pursuant to 37 C.F.R. § 1.132, declare:

1. I am currently employed as a Personal Care Lab Manager at Gattefossé SAS, Saint-Priest, FRANCE.

2. I am a co-inventor of the subject matter described and claimed in the above-identified patent application, i.e., U.S. Patent Application Serial No. 10/599,909 to Bonnet et al. (referred to herein as the “Bonnet Application”). The other co-inventors include Virginie CHARTON, Estelle BONNET, Alain GUICHON, and Paula LENNON.

3. I am familiar with and have reviewed the following article: Schutz, C. & J. Grousson, “Caper Bud Extract: A New Tool Against Cutaneous Hypersensitivity,” *SÖFW-Journal* 130:57-64 (2004) (referred to herein as the “*SÖFW* Article”).

4. I am aware that the two co-authors of the *SÖFW* Article are Caroline Schutz and Jérôme Grousson. I am also aware that both Ms. Schutz and Mr. Grousson were employees of Gattefossé SAS at the time of the drafting and publication of the *SÖFW* Article.

5. I am aware that the *SÖFW* Article has been asserted in an Office Action (mailed January 26, 2009) as prior art against the claims of the Bonnet Application. In particular, I have reviewed the prior art rejections based on the *SÖFW* Article, as set forth on pages 3-6 of the aforementioned Office Action (attached hereto as **Exhibit 1**).

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7. The *SÖFW* Article was published in September 2004.

8. The data, procedures, and other information disclosed in the *SÖFW* Article, and attributed to the *SÖFW* Article on pages 3-6 of the Office Action (*see Exhibit 1*), were derived from the work done by my aforementioned co-inventors and me, and correspond to the subject matter described and/or claimed in the Bonnet Application.

9. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

27/04/09

Date

1 Vincent Hubiche 1

Vincent Hubiche

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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EXHIBIT 1

This exhibit is “**Exhibit 1**” as referenced in the following Declarations Under 37 C.F.R. § 1.132, which are being submitted by applicants on May 23, 2009 in the above-identified patent application:

- (i) Declaration of Caroline Schutz Under 37 C.F.R. § 1.132;
- (ii) Declaration of Jérôme Grousseau Under 37 C.F.R. § 1.132;
- (iii) Declaration of Estelle Bonnet Under 37 C.F.R. § 1.132;
- (iv) Declaration of Alain Guichon Under 37 C.F.R. § 1.132;
- (v) Declaration of Virginie Charton Under 37 C.F.R. § 1.132;
- (vi) Declaration of Vincent Hubiche Under 37 C.F.R. § 1.132; and
- (vii) Declaration of Paula Lennon Under 37 C.F.R. § 1.132.

In particular, **Exhibit 1** corresponds to **pages 3-6** of the non-final Office Action mailed January 26, 2009.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 15, 17-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Schutz et al. (2004, SOWF, 130, 57-64).

Schutz et al. teaches *Capparis spinosa* bud extract have palmitic acid, linoleic acid (as fatty acids), and caper bud extracts exhibit strong anti-oxidant and free radical scavenging effect, which has been attributed to the presence of phenolic compounds identified in *Capparis spinosa* bud extracts (Capers, paragraphs 1-3). Flower buds are rehydrated, grinded and mixed with octyl-dodecyl myristate and extracted using supercritical CO₂ extraction process, where capparidols are extracted (High quality and friendly extraction process, paragraphs 1-4). Highly water soluble glucosinates are insoluble in octyl-dodecyl myristate and extracts are free of glucosinates (High quality and friendly extraction process, paragraph 6). Caper bud extract, 2% Gatuline Derma-Sensitive, was applied as a cream on volunteers with sensitive, reactive skin, subject to discomfort and diffuse redness, where the product was applied on one side of the face (in vivo efficacy, paragraph 1). *Capparis spinosa* bud extraction would inherently contain capparidols 12 because the plant source and extraction process are the same.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutz et al. (2004, SOFW, 130, 57-64).

Schutz et al. teaches *Capparis spinosa* bud extract have palmitic acid, linoleic acid (as fatty acids), and caper bud extracts exhibit strong anti-oxidant and free radical scavenging effect, which has been attributed to the presence of phenolic compounds identified in *Capparis spinosa* bud extracts (Capers, paragraphs 1-3). Flower buds are rehydrated, grinded and mixed with octyl-dodecyl myristate and extracted using supercritical CO₂ extraction process, where cappaprenoids are extracted (High quality and friendly extraction process, paragraphs 1-4). Highly water soluble glucosinates are insoluble in octyl-dodecyl myristate and extracts are free of glucosinates (High quality

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and friendly extraction process, paragraph 6). Caper bud extract, 2% Gatuline Derma-Sensitive, was applied as a cream on volunteers with sensitive, reactive skin, subject to discomfort and diffuse redness, where the product was applied on one side of the face (In vivo efficacy, paragraph 1). Capparis spinosa bud extraction would inherently contain cappaprenols 12 because the plant source and extraction process are the same. However, it does not teach the 14.8-42 mg in 100 g of a fat.

The reference does not specifically teach adding the ingredients in the amounts claimed by applicant, which is from 0.148-0.42%. However, the reference does teach the composition topical use. Schutz teaches caper bud extract, 2% Gatuline Derma-Sensitive, was applied as a cream on volunteers with sensitive, reactive skin, subject to discomfort and diffuse redness, where the product was applied on one side of the face (In vivo efficacy, paragraph 1). The amount of a specific ingredient in a composition that is used for a particular purpose (the composition itself or that particular ingredient) is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Ailer*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, optimization of general conditions is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of

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unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

Conclusion

No claim is allowed.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catheryne Chen whose telephone number is 571-272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-785-9199 (IN USA OR CANADA) or 571-272-1000.